


STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: September 2, 2022

AGENCY: Suffolk

FH #: 8496439N

In the Matter of the Appeal of	:
	: DECISION
	AFTER
	: FAIR
	HEARING
from a determination by the Suffolk County	:
Department of Social Services	:

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on September 12, 2022, in Suffolk County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Ms. Wilensky, Fair Hearing Witness

ISSUE

Did the Agency correctly deny the Appellant's request for emergency temporary housing based on the Appellant having an open wound?

FINDINGS OF FACT

All parties had an opportunity to present their evidence and after careful consideration, the following facts were established:

1. On August 29, 2022, the Appellant applied for emergency temporary housing prior to discharge from a local hospital. His application was supported by hospital records including the Appellant's PRI, ADL review and discharge plans for the Appellant. The Agency was informed the Appellant needed emergency housing upon discharge.

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2. The Appellant's hospital records indicated the Appellant had an open wound on his left arm that could be cared for by the Appellant with cleansing and a bandage.

3. Without any notice, the Agency denied the Appellant's request for emergency housing. The Appellant was not aware of the basis for the denial and thought the Agency's determination might be related to the Appellant's resources- car.

4. On September 1, 2022, the Agency went to the Agency and asked for emergency temporary housing.

5. The Agency failed to address and assess the Appellant's immediate needs when the Appellant applied for emergency housing.

6. The Agency failed to comply with 16 ADM 11 and 94 ADM 20.

7. The Appellant slept in his car for due to the Agency's failure to act.

8. On September 1, 2022, the Agency denied the Appellant's request for emergency housing based on the Appellant having an open wound.

9. On September 2, 2022, the Appellant requested this fair hearing.

10. On September 2, 2022, the Agency placed the Appellant in temporary housing.

APPLICABLE LAW

Administrative Directive 94 ADM-20 states in pertinent part:

..." A district must meet emergency needs of eligible persons and determine, based upon the particular circumstances, the most appropriate temporary housing assistance for such persons. Homeless persons do not have the right to choose their own temporary placements. The overriding concern is the district's efforts to locate, secure and pay for housing which meets basic standards of health and safety, as set forth in applicable Department regulations.

..." When no other suitable temporary or permanent housing, either public or private, is available to house an eligible homeless person, Department regulations 18 NYCRR 352.3(e)&(f) authorize an allowance to be made for shelter in a hotel or motel.

As a condition of eligibility for temporary housing assistance, individuals and families

must comply with the requirements of this subdivision. Temporary housing assistance will be denied or discontinued under the conditions specified below. Temporary housing assistance will not be denied or discontinued for failure of the individual or family to comply with the requirements of this subdivision when such failure is due to the physical or mental impairment of the individual or family member. 18 NYCRR 352.35(c).

An individual or family must cooperate in and complete an assessment conducted by the social services district. When an individual or family fails to cooperate in and complete the assessment, the social services district must deny the individual's or family's application for temporary housing assistance. 18 NYCRR 352.35(c)(1).

An individual or family must refrain from engaging in acts which endanger the health or safety of oneself or others, or which substantially and repeatedly interfere with the orderly operation of a temporary housing facility. When an individual or family commits such acts, including but not limited to acts of violence, selling drugs, or repeated violations of the rules of a temporary housing facility, the social services district must discontinue temporary housing assistance until the failure ceases, or for 30 days, whichever period is longer. 18 NYCRR 353.35(c)(4).

Prior to denying or discontinuing temporary housing assistance pursuant to subdivision (c) of this section, the social services district must evaluate the individual's or the family's need for protective services for adults, preventive services for children and protective services for children and, if necessary, make an appropriate referral. 18 NYCRR 352.35(d).

A homeless individual or family applying for or receiving temporary housing assistance, pursuant to sections 352.3(e) or 352.8 of this Part or Parts 371 or 491 of this Title, also must comply with all other applicable public assistance and care requirements including, but not limited to:

- (1) requirements for participation in employment and training programs, in accordance with Part 385 of this Title, including looking for work, engaging in training, accepting jobs and work assignments, and participating in rehabilitative services;
- (2) requirements for participation in rehabilitative services, as described in section 370.2(d)(7) of this Title and Part 385 of this Title;
- (3) requirements for participation in the child support enforcement program, as described in sections 351.2(e)(2)(iv), 369.2(b) and 370.2(d) of this Title;
- (4) requirements to apply for supplemental security income benefits, as described in sections 369.2(h) and 370.2(c)(5) of this Title;
- (5) requirements for location of resources, as described in section 351.2(e) of this Title; and

- (6) requirements for acceptance of the offer of a home, as described in section 370.2(c) of this Title.

Failure to comply with any public assistance and care requirements, including, but not limited to, those described above, will subject the recipient of temporary housing assistance to the sanctions specified in the applicable sections of this Title. 18 NYCRR 352.35(e).

DISCUSSION

At issue in this hearing is the Agency's failure to act on the Appellant's request for emergency temporary housing based on an application dated August 29, 2022. The Agency contended the Appellant's needs were met based on the Appellant's placement in temporary housing since September 2, 2022. Counsel for the Appellant refuted the Agency's "no harm, no foul" position.

On August 29, 2022, the Agency received the Appellant's request for emergency temporary housing prior to his discharge from a local hospital. The Agency received all the requisite documentation for their eligibility determination. The Agency did not comply with the assessment requirements noted above and summarily denied the Appellant's request for emergency temporary housing without notice. The Agency offered no basis for denying the Appellant emergency temporary housing without assessments and an appropriate denial notice. Procedurally, the Agency would be reversed based on their inaction on the Appellant's August 29, 2022 application. The Appellant had to sleep in his car based on the Agency failing to address his immediate needs as a medically vulnerable homeless individual. On September 1, 2022, the Appellant went to the Agency and asked for emergency temporary housing. The Agency issued a denial notice on the same day asserting the Appellant was not eligible for emergency temporary housing because he had an open wound.

The Agency's denial focused on Title 10 NYCRR Section 400.13, "Single individuals seeking SCDSS Temporary Housing Assistance must: not have a contagious or communicable disease, open wounds or MRSA." The Agency maintained that since the Appellant's discharge papers indicated he had an open wound which required wound treatment, the Agency correctly denied the Appellant's request for emergency temporary housing. The Agency's position regarding an "open wound" denial is without merit. The Agency is aware the Appellant's open wound and care is not a basis for temporary housing assistance denial. (See Decision After Fair Hearing #7803808Z). In addition, the Appellant's hospital records reflected the Appellant's open wound merely required self-care cleaning and the placement of a bandage. If the Agency had conducted mandatory assessments and interviewed the Appellant, their concerns regarding an open wound would have been assuaged. After repeated requests for immediate attention by the Appellant's legal counsel, the Agency withdrew their "open wound" denial because the hospital clarified the Appellant did not have an open wound only an infected fistula near the Appellant's dialysis port.

Even if the Agency's first denial were based on a correct interpretation of the facts regarding an open wound, the Agency should have placed the Appellant in alternate temporary housing, i.e., hotel/motel placement, where he would be separate from other residents until medical clearance was obtained. The Agency contended they do not place homeless individuals in motels or hotels. Clearly, this statement is not true after reviewing Decisions After Fair Hearings #8237363J (March 2021) and #8173177Z (July 2020), cited by the Appellant's counsel. The Agency failed to address the requirements of 18 NYCRR 491.9, specifically subparagraph (d), which goes on to state the following:

"When a person cannot be referred to a shelter for adults, a small-capacity shelter, or a shelter for adult families for any of the reasons set forth in subdivision (c) of this section, the social services district must ensure that action is taken which is appropriate to the health, safety and needs of that person..."

The Agency has been directed in 2018, 2020 and 2021 regarding appropriate actions for addressing the needs of medically vulnerable homeless people. Despite directed mandates, the Agency continued to inadequately address the Appellant's immediate needs and provide emergency housing in this case. The Agency's lack of attention to the appropriate protocol for determining the Appellant's eligibility for emergency temporary housing was clearly apparent when the Agency emailed the Appellant's counsel days prior to this fairing hearing stating:

"Mr. [REDACTED]'s ADA needs have been met. Please have him withdraw from the fair hearing."

The Agency's no harm no foul attitude does not address the Appellant having to sleep in his car for more than one night after he was released from the hospital and clearly needed a roof over his head and a bed to sleep in.

The Agency's representative was given an opportunity to respond to the Appellant's legal counsel's documents submitted and read into the record but correctly noted, she was an advocate relying on documents submitted to her in the fair hearing. The Agency did not refute evidence submitted by the Appellant and counsel.

DECISION AND ORDER

The Agency incorrectly denied the Appellant's request for emergency temporary housing on August 29, 2022 and September 1, 2022.

1. The Agency is directed to follow the appropriate protocol cited above when receiving requests from medically vulnerable homeless individuals.
2. The Agency is directed to continue the Appellant's current placement in emergency temporary housing and complete the requisite assessment processes noted above.

As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

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DATED: Albany, New York
09/14/2022

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Selma Lee". The signature is written in a cursive, flowing style.

Commissioner's Designee

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